

E-FILED on: 9/17/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROBERT ANTHONY, individually and on
behalf of others similarly situated,

Plaintiff,

v.

YAHOO! INC., a Delaware corporation,

Defendant.

No. C-05-04175 RMW

ORDER GRANTING MOTIONS FOR FINAL
SETTLEMENT APPROVAL, AWARD OF
ATTORNEY'S FEES AND EXPENSES, AND
CLASS REPRESENTATIVE INCENTIVE
AWARD

[Re Docket Nos. 101, 112, 115]

The Motions of plaintiff for Final Approval of Settlement, for Award of Attorneys' Fees and Expenses and for Class Representative Incentive Award were heard on November 30, 2007. One written objection to the proposed settlement was received from Michael J. England who applauds plaintiff's counsel for pursuing Defendant Yahoo, Inc. but complains about the amount of attorneys' fees and the "small sum" awarded to class members. The objection is overruled. The court finds the settlement fair, adequate and reasonable and hereby gives final approval to it subject to the court's continuing jurisdiction over the carrying out of the settlement. Approval is justified by the fact that defendant's liability was in question, the injury to individual class members minimal and favorable injunctive relief was negotiated. The settlement was reached only after negotiating sessions between competent and experienced counsel with a respected mediator.

The court approves reimbursement of plaintiff's counsel's costs of \$54,430.82.

ORDER GRANTING MOTIONS FOR FINAL SETTLEMENT APPROVAL, AWARD OF ATTORNEY'S FEES AND EXPENSES,
AND CLASS REPRESENTATIVE INCENTIVE AWARD

C-05-04175 RMW

TSF

1 The court approves a Class Representative incentive award to Robert Anthony of \$20,000.
 2 His declaration supports significant time and effort investigating the facts and supporting the
 3 litigation.

4 Plaintiff seeks attorneys' fees in the amount of 25% of the gross monetary recovery of
 5 \$4,000,000, specifically \$1,000,000 which Plaintiff says is approximately equal to the lodestar
 6 figure with a multiplier of 2.75. The court finds that a 25% contingency fee is fair under the
 7 circumstances of this case. Although the percentage of class members participating is not large, the
 8 plaintiff's counsel pursued the case diligently and negotiated meaningful injunctive relief and a
 9 sufficient monetary payment to cover the participating class members' losses.

10 However, as it warned counsel at the preliminary approval hearing, the court does not
 11 believe contingent attorney's fees should be calculated based upon gross recovery. The fee should
 12 be calculated on a net basis. In other words, plaintiff's counsel should only receive 25% of the net
 13 recovery after costs and administrative expenses have been deducted from the \$4,000,000.
 14 Somewhat troubling here is the uncertainty and size of the final amount to be charged for
 15 administrative fees. In Randy Rosenblum's Declaration in Support of Motion to Award Attorneys'
 16 Fees and Costs filed October 10, 2007, he represents administrative fees and costs through
 17 September 12, 2007 as totaling \$307,745.83. However, Jennifer M. Keough, a representative of the
 18 Claims Administrator, states that fees and costs through November 26, 2007 total \$519,564.24 and
 19 that the final administrative costs could run as high as \$1,000,000. Since the court retains
 20 jurisdiction of this case under Section IV.G, the court reserves jurisdiction to withhold payment
 21 from the settlement fund to the Claims Administrator, if any party objects to the final billing of the
 22 Claims Administrator and the court on review finds the charge excessive.

23 Based on the foregoing, the court approves an award of attorney's fees based on the
 24 following calculations:

25	<u>Gross Recovery:</u>	\$4,000,000	
26	–	\$20,000	(incentive award)
27	–	\$54,430.82	(attorney's expenses)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

– \$ X (total administrative expenses)

Net Recovery: \$3,925,569.18 – \$X

Attorney's Fee: 25% of (\$3,925,569.18 – \$X)

DATED: 9/16/2008



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff(s):**

3 Brett Lee Rosenthal Brett@mcnultylaw.com
4 Manuel Dobrinsky MDobrinsky@fdlaw.net
5 Peter J. McNulty peter@mcnultylaw.com
Philip Freidin PFreidin@fdlaw.net
Randy Rosenblum RRosenblum@fdlaw.net
T. Omar Malone OMalone@fdlaw.net

6 **Counsel for Defendant(s):**

7 Michele D. Floyd mfloyd@reedsmith.com
8 Kerry Hopkins Khopkins@reedsmith.com

9 Counsel are responsible for distributing copies of this document to co-counsel that have not
10 registered for e-filing under the court's CM/ECF program.

11
12 **Dated:** 9/17/2008

13 TSF
14 **Chambers of Judge Whyte**